FILE COPY

CAUSE NO. D-1-GN-06-002209

| | | |
|---|---|---|
| JANE DOE, Individually, and<br>As Next of Friend of JULIE DOE, a Minor;<br><br>Plaintiffs, | § | IN THE DISTRICT COURT OF |
| v. | § | |
| MYSPACE, INC.;<br>NEWS CORPORATION; and<br>PETE I. SOLIS<br><br>Defendants. | § | TRAVIS COUNTY, TEXAS<br><br>261ST JUDICIAL DISTRICT |

FILED
06 AUG 10 PM 3:05
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

**PLAINTIFFS' FIRST AMENDED ORIGINAL PETITION**

Plaintiffs, Jane Doe, individually, and as next of friend of Julie Doe, a minor (collectively, "Plaintiffs"), seek damages against Defendants MySpace Incorporated and News Corporation for negligence, gross negligence, fraud, fraud by nondisclosure and negligent misrepresentation – Defendants MySpace Incorporated and News Corporation are jointly and severely liable. Plaintiffs also seek damages against Defendant Pete I. Solis for sexual assault and intentional infliction of emotional distress. Plaintiffs would respectfully show the Court as follows:

**I.**

**PARTIES**

1. Plaintiff, Jane Doe, is a Texas resident and resides in Travis County, Texas. She is the parent and legal guardian of Julie Doe.

2. Plaintiff, Julie Doe, is a Texas resident and resides in Travis County, Texas. She is a 14-year-old minor.

3. Defendant, MySpace Incorporated ("MySpace"), is a Delaware Corporation and a wholly-owned subsidiary of Defendant News Corporation. MySpace has substantial, continuous and systematic business contacts in Texas, and has committed tortious acts within Texas. MySpace has already been served with process and filed an answer.

4. Defendant, News Corporation ("News Corp."), is a Delaware Corporation. News Corp. has substantial, continuous and systematic business contacts in Texas, and has committed tortious acts within Texas. News Corp. has already been served with process and filed an answer.

5. Defendant, Pete I. Solis (" Pete Solis"), is a Texas resident and currently resides at 160 Calderon, Buda, Texas 78610. Pete Solis has already been served with process and filed an answer.

## II.

## JURISDICTION AND VENUE

6. Jurisdiction over this case is proper as all parties reside in Texas, conduct substantial, continuous and systematic business in Texas, and/or have committed tortious acts within Texas. Plaintiffs seek damages, exclusive of interest and costs, in excess of the minimum jurisdictional limits of this Court. Furthermore, jurisdiction is proper in Texas under the Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code § 17.041 *et seq.*, because Defendants MySpace and News Corp. have committed tortious acts in Texas and acts that constitute doing business in Texas.

7. Venue is proper in Travis County, Texas, pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a), as all or a substantial part of the acts or omissions giving rise to Plaintiffs' claims occurred in Travis County, Texas. Venue is further proper because this court has personal jurisdiction over Defendants. Defendants have committed tortious acts in Texas and/or Defendants have committed acts that constitute doing business in Texas.

## III.

## DISCOVERY LEVEL

8. Plaintiffs intend to conduct Level 3 discovery pursuant to TEX. R. CIV. P. 190.3.

## IV.

## FACTS

### An Overview of MySpace

9. MySpace.com ("Myspace") is a social networking internet website where children and adults of all ages are encouraged to sign up and socialize in cyberspace. Founded in July 2003 by Tom Anderson and Chris DeWolfe, MySpace quickly exploded in popularity and became an online force to be reckoned with. In less than two years, MySpace has amassed more than 80 million registered users worldwide. As of July 11, 2006, Myspace is the world's most visited domain on the internet for internet users located in the United States.[1]

10. In an attempt to capitalize on this success, Tom Anderson and Chris DeWolfe sold MySpace and its parent company, Intermix Media, Inc., to News Corp. for an estimated $649 million. News Corp. is a worldwide media conglomerate with

[1] Bill Tancer, *Myspace Moves to #1 Position for all Internet Sites*, Hitwise Intelligence Analyst Blogs, July 11, 2006 at http://weblogs.hitwise.com/bill-tancer/2006/07/myspace_moves_into_1_position.html.

approximately $55 billion in total assets and approximately $24 billion per year in annual revenues.

11. To access the social network, one must create a MySpace account. In order to create a MySpace account, all one has to do is enter a name, email address, gender, country, and date of birth. None of this information has to be true. MySpace does not have any verification mechanism in place to authenticate a new user's age or identification information. MySpace represents that a user must be at least 14 years of age to join – of course, this is not subject to any form of authentication. Thus, MySpace does not have any verification mechanism to ensure its users are of the age they claim to be, effectively providing a complete blanket of anonymity.

12. Once signed up, each MySpace user is given his or her own personal webpage to create. MySpace users are then prompted to post photographs and personal information on their webpage. Typically, a MySpace user's webpage is viewable by any other MySpace user. Further, any MySpace user can contact any other MySpace user through internal email and/or instant messaging on MySpace. Myspace users of all ages are then encouraged to begin socializing with other Myspace users.

13. MySpace currently has more than 80 million registered users online. It is also estimated that MySpace has over thirty (30) billion page views per month.[2] Ross Levinsohn, Senior Vice President and General Manager of Fox Interactive Media (a wholly-owned subsidiary of News Corp.), says that not even the internet giant

---

[2] Michael Arrington, *The 27.4 Billion Pound Gorilla*, TechCrunch, June 13, 2006, at http://www.techcrunch.com/2006/06/13/MySpace-the-27-billion-pound-gorilla.

Google.com believes it can provide enough advertisements to fill all the pages that MySpace displays each day.[3]

14. The catalyst behind MySpace's amazing surge in popularity is their underage users demographic. According to MySpace, approximately 22 percent of MySpace visitors are minors, under the age of 18.[4] MySpace actively and passively markets itself to minors.

15. Rupert Murdoch, News Corp. Chairman and Chief Executive Officer, is well aware that MySpace's continued success is directly tied into the website's appeal among young people, and the advertising revenue MySpace can generate.[5] The News Corp. CEO is also aware that he is sitting on a cash-cow. So much so that News Corp., the parent company that wholly-owns Myspace, is adamant that MySpace CEO Chris DeWolfe find a way to make much more money from MySpace.[6] MySpace is projected to generate around $200 million dollars in revenue this year, and has the potential to generate much more revenue as MySpace's popularity with the young teenagers continues to grow.[7] News Corp. ultimately controls the short and long term business decisions associated with Myspace.

16. The News Corp. CEO is equally aware of the dangers MySpace poses to underage minors using MySpace. In his February 13, 2006 interview with Newsweek Magazine,

---

[3] Saul Hansell, *For MySpace, Making Friends Was Easy. Big Profit is Tougher.*, The New York Times, April 23, 2006.

[4] Julia Angwin and Brian Steinberg, *News Corp. Goal: Make MySpace Safer For Teens*, The Wall Street Journal, February 17, 2006.

[5] Saul Hansell, *For MySpace, Making Friends Was Easy. Big Profit is Tougher.*, The New York Times, April 23, 2006.

[6] *Id.*

[7] *Id.*

when asked about claims by law enforcement that sexual predators are trolling Myspace in search of young victims, Mr. Murdoch stated,

> "***We're being very proactive.*** We plan to reach out further to schools, principals, church groups and community organizations to educate them on the safety measures we've developed. ***For example, no one under 14 is allowed on the site, and there are strict limits on who can access profiles of users under 16...***"[8]

While attempting to expand MySpace's success and popularity with underage minors, he has been increasingly confronted by state Attorneys General across the United States and the public at large about the dangers Myspace poses to its underage users. Yet, Myspace has made no real effort to meaningfully increase the safety and security of their most important asset – young underage Myspace users. Sadly, Mr. Murdoch's initial strategy "seems to be to do nothing to interfere with whatever alchemy has attracted so many young people to MySpace in the first place."[9]

17. MySpace proudly represents to parents and the public at large that teenagers under the age of 14 are not allowed to join MySpace. MySpace represents that the website has protections in place so that MySpace users ages 14 and 15 cannot be contacted by adult MySpace users. MySpace has publicly represented that the website is safe for its young underage users and that MySpace is doing everything to ensure it has adequate security measures in place to protect its young underage users.[10]

18. Despite MySpace's claims that Myspace is safe for young underage users, the facts suggest otherwise.

---

[8] Len Irish, *Murdoch's New Groove*, Newsweek, February 13, 2006.

[9] Saul Hansell, *For MySpace, Making Friends Was Easy. Big Profit is Tougher.*, The New York Times, April 23, 2006.

[10] Julia Angwin and Brian Steinberg, *News Corp. Goal: Make MySpace Safer For Teens*, The Wall Street Journal, February 17, 2006.

**Adult Sexual Predators on MySpace**

19. In the past year, a disturbing number of incidents have occurred nationwide in which adult MySpace users contacted young underage MySpace users on MySpace. The adult MySpace users then arranged to meet the minors and, often, sexually assaulted them. The following is a brief, non-exhaustive list, of a few of the criminal incidents that have resulted from adult MySpace users contacting young underage MySpace users on MySpace:

a. On December 29, 2005, John David Payne of Brenham, Texas, was arrested for soliciting sex from young underage MySpace users. Mr. Payne thought he was chatting with young underage MySpace users on MySpace but, in reality, they were actually undercover investigators. On or about May 10, 2006, Mr. Payne was again arrested for soliciting sex on MySpace from young underage MySpace users.[11]

b. On March 2, 2006, Federal prosecutors charged Sonny Szeto, 22, of New York, for using MySpace to meet an 11-year-old girl.[12]

c. On March 2, 2006, Federal prosecutors charged Stephen Letavec, 39, of Pennsylvania, for using MySpace to meet a 14-year-old girl.[13]

d. On May 1, 2006, Aaron Whitney, 27, of Chaplin, Connecticut, was charged with sexually assaulting a 13-year-old girl he met on MySpace.[14]

---

[11] John Mortiz, *Attorney General Wants Web MySpace to Protect Young Users*, Fort Worth Star-Telegram, May 23, 2006.

[12] *MySpace.com to Bolster Security Measures*, Reuters Limited, March 3, 2006.

[13] *Id.*

e. On May 6, 2006, Jesse Cahn, 22, of Stevens Point, Wisconsin, was charged with six counts of sexually assaulting a 14-year-old girl he met on MySpace.[15]

f. On May 12, 2006, Juan Gomez, 34, of Mount Vernon, New York, was charged with the felony of attempted dissemination of indecent material to a minor. Mr. Gomez contacted a 14-year-old girl on MySpace and engaged her in sexually explicit conversations. He was arrested when he attempted to meet the 14-year-old girl.[16]

g. On May 15, 2006, Matthew R. Gale, 26, of Macomb, Illinois, was charged with six counts of aggravated sexual abuse and four counts of criminal sexual assault of a 16-year-old girl he contacted on MySpace.[17]

h. On May 22, 2006, a cyber crimes sting set up by the Texas Attorney General's Office netted the arrests of three adult men attempting to solicit sex from young underage MySpace users on MySpace.[18]

i. On May 29, 2006, prosecutors in Cleveland, Ohio, charged two adult men, Albert Azolino, 21, and Timothy Norman, 33, with sexually assaulting a 14-year-old girl they contacted on MySpace.[19]

---

[14] *Chaplin Man Arrested; Allegedly Met Girl, 13, on MySpace.com*, Norwich Bulletin, May 2, 2006.

[15] News Channel 7, Wausau, Wisconsin, at http://www.wsaw.com/home/headlines/2815471.html.

[16] *Ex-Teacher's Aide Caught in Pedophile Sting Operation*, North Country Gazette, May 12, 2006.

[17] Stacey Creasy, *Police Dig into Suspect's Past*, Daily Review Atlas, May 15, 2006.

[18] News Channel 11, Houston, Texas at http://www.khou.com/news/local/stories/khou060522_ac_cybercrimessting.f9e1e54.html.

[19] News Channel 3, Cleveland, Ohio at http://www.wkyc.com/news/watercooler/watercooler_article.aspx?storyid=53044.

j. On or about June 6, 2006, John Wentworth, 27, of Morris, Illinois, was charged with indecent solicitation of a child, attempted criminal sexual assault and aggravated criminal sexual abuse when he attempted to meet and sexually assault a 14-year-old girl he contacted on MySpace.[20]

k. On or about June 7, 2006, three Connecticut adult men were charged with numerous counts of sexual assault and risk of injury to a child for incidents involving two underage MySpace users they met on MySpace. Both girls were under the age of 16.[21]

l. On or about June 10, 2006, Shaun Roethlisberger, 21, of Duluth, Minnesota, was charged with two counts of third-degree criminal sexual conduct for having sexual intercourse with a 14-year-old girl he met on MySpace.[22]

m. On or about June 12, 2006, Jay Coffield, 44, of Naperville, Illinois, was arrested for soliciting sex from a 14-year-old girl he met on MySpace.[23]

**Attorneys General' Responses**

20. The above-listed incidents have sparked considerable media attention and concern from the public. As a result of these incidents, several state Attorneys General opened investigations into MySpace's lax security policies. They all concluded that despite MySpace's express representations to the public, MySpace has no meaningful security measures or policies in place to protect young underage MySpace users.

---

[20] Jo Ann Hustis, *Man Charged with Solicitation*, Morris Daily Herald, June 12, 2006.

[21] Tom Kasprzak, *5 Connecticut Males Charged in Net Sex Case Connected to Stonington Girls*, The Westerly Sun, June 7, 2006.

[22] Mark Stodghill, *Sex Offender Arrested*, Duluth News Tribune, June 10, 2006.

[23] *Police Say Man Arranged Sex with Girl, 14, on MySpace.com*, Chicago Tribune, June 11, 2006.

21. On February 2, 2006, Connecticut Attorney Richard Blumenthal opened a formal investigation into MySpace. On March 20, 2006, Attorney General Blumenthal sent MySpace, through their attorneys, a formal letter requesting, among other things, that MySpace: (1) raise the minimum age for a MySpace user from 14 to 16; and (2) require MySpace users to log in and verify their age before viewing profiles. *See attached*, **Exhibit A**, fully incorporated herein by reference.

22. On March 24, 2006, Ohio Attorney General Jim Petro sent MySpace Chief Executive Officer Chris DeWolfe a formal letter detailing that Ohio children were in danger due to the lax operating policies of MySpace and, among other things, urged MySpace to: (1) increase the minimum user age from 14 to 16; (2) prohibit adult users from accessing the profiles of young underage MySpace users; and (3) require that all new users enter a verifiable credit card number during the registration process. *See attached*, **Exhibit B**, fully incorporated herein by reference.

23. Additionally, in March 2006, representatives for Massachusetts Attorney General Tom Reilly met with MySpace representatives to discuss their concerns about MySpace. Attorney General Reilly's office concluded that although MySpace maintains that only members under the age of 18 can view the profiles of members aged 14 to 15 years-old, their investigation revealed that MySpace does not have any system in place to verify its members' ages. Thus, nothing is preventing adult Myspace users from contacting young underage Myspace users.

24. On or about May 2, 2006, Attorney General Reilly sent a formal letter to MySpace company officials demanding that MySpace increase its minimum user age

from 14 to 18 and institute an age and identify verification system. *See attached*, **Exhibit C**, fully incorporated herein by reference.

25. On May 22, 2006, Texas Attorney General Greg Abbott sent MySpace CEO Chris DeWolfe a notice letter expressing similar concerns. In it, Attorney General Abbott informed MySpace that:

> "By not requiring bank account information or a credit card in order to access your services, ***you have no way of authenticating the identify or age of your users, thereby providing a blanket of anonymity to those who wish to engage in criminal activity on your website.*** Although I understand you currently use an age verification system, ***our investigators have found it uncomfortably easy in a relatively short period of time to locate many underage profiles on your MySpace***. A system of identity/age verification via credit card or a verified email account would be a better system than the current methods used by your web MySpace." (emphasis added)

*See attached*, **Exhibit D**, fully incorporated herein by reference.

**MySpace's Response**

26. In light of these numerous incidents, pressure from Attorneys General around the United States, and a growing media interest, MySpace representatives went on the defensive and issued numerous public statements emphasizing the safety of MySpace for young underage MySpace users. In February 2006, MySpace representatives told CBS News that:

> "There are a number of specific procedures and policies in place to ensure users of all ages have a safe and meaningful experience. These include limiting use of the website to users who are at least 14 years of age and ***providing special protections to users who are under 16 so that their personal information cannot be accessed by persons they do not know.***"[24]

Even Myspace's parent company, News Corp., came out publicly with a statement from its CEO, Rupert Murdoch, stating:

---

[24] *MySpace.com Responds to Web Risks*, CBS News, February 6, 2006 (emphasis added).

> "***We're being very proactive.*** We plan to reach out further to schools, principals, church groups and community organizations to educate them on the safety measures we've developed. ***For example, no one under 14 is allowed on the site, and there are strict limits on who can access profiles of users under 16...***"[25]

27. As of June 19, 2006, MySpace also expressly represents these policies in the "Terms and Conditions" section on MySpace. MySpace claims that it is "illegal" or "prohibited" to "solicit personal information from anyone under 18." MySpace also has a section entitled "Tips for Parents" where they state "MySpace members must be 14 years of age or older."

28. Notwithstanding MySpace's express representations to the contrary, problems of young underage MySpace users being contacted and sexually assaulted by adult Mypsace users continue to plague MySpace. In further attempts to appease the public, in late April 2006, MySpace CEO Chris DeWolfe unveiled and widely-publicized a three-prong strategy to address growing safety concerns. The strategy included:

(1) Putting in security technology, such as tools that allow children aged 14-16 years-old to shield their personal information from strangers;

(2) Increasing manpower to review photos and images uploaded by MySpace users; and

(3) Hiring Hemanshu Nigam (a former Federal Prosecutor, and so-called "Safety Czar") to head-up MySpace security.[26]

29. Unfortunately, MySpace's widely-publicized security strategy was simply public showmanship and a veiled attempt to appease the growing public outcry over their security concerns. MySpace knew that these measures did nothing to meaningfully

[25] Len Irish, *Murdoch's New Groove*, Newsweek, February 13, 2006.

[26] Jesse Hempel, *From MySpace to Safer Place?*, BusinessWeek, April 11, 2006.

increase the safety of young underage MySpace users. Yet, MySpace advertised it to the public as a substantial increase in the security of MySpace for young underage MySpace users. Tragically, by failing to properly address these concerns and institute meaningful security measures for young underage Myspace users, 14-year-old Julie was sexually assaulted by an adult MySpace user who found her on MySpace.

**The Sexual Assault of 14-Year-Old Julie Doe**

30. In the summer of 2005, 14-year-old Julie created a profile on MySpace. At the time, Julie was only 13-years-old. Despite MySpace's supposed rule prohibiting anyone under 14-years-old from using MySpace, Julie was able to create a profile. Julie did not regularly begin using MySpace until approximately February 2006.

31. On April 6, 2006, 19-year-old Pete Solis, an adult MySpace user, initiated contact with 14-year-old Julie on MySpace. 14-year-old Julie responded to Pete Solis' communications and thus began a series of emails between the adult MySpace user and 14-year-old Julie.

32. Pete Solis told 14-year-old Julie that he was a high-school senior that played on the football team. This was a lie. 14-year-old Julie told him she was a 14-year-old freshman in high-school. Pete Solis then quickly solicited and received 14-year-old Julie's cell phone number. Pete Solis and 14-year-old Julie had several conversations over the phone as Pete Solis attempted to gain 14-year-old Julie's trust. It worked.

33. On May 12, 2006, Pete Solis arranged to meet 14-year-old Julie after school. Later that day, Pete Solis sexually assaulted 14-year-old Julie.

34. On May 13, 2006, Jane Doe called the Austin Police Department to report the sexual assault of 14-year-old Julie.

35. A detective from the Child Abuse Investigations Unit of the Austin Police Department conducted an investigation. In a videotaped confession, the adult MySpace user admitted to initiating contact with 14-year-old Julie on MySpace, soliciting her personal information, gaining her trust, and then sexually assaulting her. Pete Solis was then arrested by the Austin Police Department and indicted by the Travis County District Attorney's Office for Sexual Assault, a 2nd Degree Felony.

V.

**CAUSES OF ACTION**

36. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

37. MySpace actively and passively encourages young underage age children to join MySpace, and then directs them to communicate and socialize with complete strangers.

38. It is undisputed that MySpace's recent surge in popularity is driven by the onslaught of young underage users joining and using MySpace. To that end, MySpace has a very strong financial incentive to ensure that MySpace's popularity with young underage children remains intact, and continues to increase. MySpace has no financial incentive to institute any meaningful security measures to increase the safety of young underage MySpace users. In fact, MySpace's interest is to ensure that access to MySpace by young underage children remains effortless and unfettered.

39. Despite MySpace's knowledge of the increasing occurrences of sexual assaults on young underage MySpace users by adult MySpace users, and despite MySpace's express representations to the contrary, there are absolutely no meaningful protections or security

measures to protect young underage users from being contacted by adult sexual predators on Myspace.

40. MySpace's numerous representations to the public of "extra precautions" and "special protections" in place that "ensure users of all ages have a safe and meaningful experience" are false and dishonest. Attorneys General' Offices across the United States have made it abundantly clear to MySpace for months that they are not the "leader in internet security" that they proclaim to be.

41. Despite all the warnings, the numerous incidents of sexual assaults on young underage MySpace users by adult MySpace users, and their widely-publicized claims of safety to the public, MySpace has still not instituted any meaningful changes or additional security measures to effectively increase the safety of their young underage users.

## COUNT I – NEGLIGENCE

42. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

43. MySpace constructed a website that allows people of any age to join and indiscriminately communicate with each other. MySpace actively encourages young underage children and adults to join MySpace and socialize with complete strangers.

44. MySpace expressly and implicitly represented that their website was safe for young underage users, but MySpace had actual and constructive knowledge that they had no meaningful security measures or policies in place to effectively safeguard young underage MySpace users from being contacted by dangerous adult MySpace users.

45. Furthermore, MySpace had actual and constructive knowledge of numerous sexual assaults and attempted sexual assaults of young underage MySpace users by adult MySpace users who used MySpace to initiate contact with them and draw them out.

46. MySpace owed a legal duty to 14-year-old Julie to institute and enforce appropriate security measures and policies that would substantially decrease the likelihood of danger and harm that MySpace posed to her.

47. MySpace breached their duty by publicly touting the effectiveness of their security measures and policies they knew or should have known were utterly ineffective in deterring the likelihood of danger and harm to 14-year-old Julie. MySpace also breached their duty by failing to act to substantially decrease the likelihood of danger and harm to 14-year-old Julie upon gaining actual and constructive knowledge of the danger and harm.

48. MySpace's breach of their duty proximately caused the sexual assault of 14-year-old Julie. The physical, psychological and emotional trauma 14-year-old Julie endured is indescribable and permanent. MySpace is the proximate cause of 14-year-old Julie's injuries.

49. Plaintiffs seek actual and exemplary damages against MySpace and News Corp. for MySpace's negligence.

50. MySpace and News Corp. are jointly and severely liable for these damages.

## COUNT II – GROSS NEGLIGENCE

51. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

52. MySpace has knowingly and purposely placed corporate greed over the health and safety of young underage MySpace users.

53. MySpace's actions, along with their omissions to act, when viewed objectively from their own standpoint, during the timeframe discussed *supra*, involved an extreme degree of risk and callousness. Particularly in light of:

(1) MySpace's actual knowledge, awareness, and conscious indifference of the extreme dangers MySpace posed to young underage MySpace users;

(2) MySpace's actual knowledge, awareness, and conscious indifference that adult MySpace users were able to contact and were regularly contacting young underage MySpace users, obtaining their personal information, and sometimes sexually assaulting them;

(3) MySpace's actual knowledge, awareness, and conscious indifference to the warnings given them by Attorneys General' Offices around the United States;

(4) MySpace's actual knowledge, awareness, and conscious indifference to the misrepresentations they made to Plaintiffs and the public at large regarding the safety and security of MySpace for young underage MySpace users; and

(5) MySpace's actual knowledge, awareness, and conscious indifference to not institute even the most minimal and inexpensive of security measures that would have greatly increased the safety of young underage MySpace users from being contacted by, exploited, and sexually assaulted by adult MySpace members.

54. From MySpace's standpoint there was a likelihood of serious injury and harm to young underage MySpace users, particularly 14-year-old Julie, and there was more than just a remote possibility of injury. MySpace had actual knowledge of other incidents that occurred in nearly the exact same manner as the incidents complained of herein (sexual assaults of young underage MySpace members by adult MySpace members), and to the exact same class of persons (young underage MySpace users).

55. MySpace's actions, along with their omissions to act, demonstrate a conscious indifference and utter disregard for the rights, safety, and welfare of young underage MySpace users, particularly 14-year-old Julie.

56. Plaintiffs seek actual and exemplary damages against MySpace and News Corp. for MySpace's gross negligence.

57. MySpace and News Corp. are jointly and severely liable for these damages.

**COUNT III – FRAUD**

58. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

59. MySpace made express and implied representations to Plaintiffs, both directly and indirectly. MySpace posted express representations on MySpace and made numerous material and false express and implied representations to the public that MySpace was safe for young underage MySpace users. These material and false representations were untrue, deceptive and misleading.

60. MySpace made these material and false representations knowing they were false and/or made them recklessly without knowledge of their truth and as a positive assertion of fact.

61. MySpace made these material and false representations with the intent that Plaintiffs rely upon them and with the expectation that Plaintiffs would act in reliance on them.

62. Plaintiffs knew of MySpace's material and false representations, Plaintiffs relied upon them, and Plaintiffs' reliance was justifiable.

63. MySpace's material and false representations were the direct and proximate cause of Plaintiffs' injuries.

64. Plaintiffs seek actual, direct, consequential and exemplary damages against MySpace and News Corp. for MySpace's fraudulent conduct.

65. MySpace and News Corp. are jointly and severely liable for these damages.

## COUNT IV – FRAUD BY NONDISCLOSURE

66. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

67. MySpace concealed from and/or failed to disclose material facts to Plaintiffs regarding the lack of security and protections of MySpace for young underage users.

68. MySpace had a duty to Plaintiffs to disclose these material facts since they knew their voluntary and/or partial disclosures regarding the alleged security and protections in place for young underage MySpace users was misleading, untrue, and created a false impression. MySpace knew Plaintiffs were ignorant of these material facts and Plaintiffs did not have an equal opportunity to discover them.

69. Despite MySpace's duty to disclose these material facts they deliberately remained silent. By deliberately remaining silent and failing to disclose these material

facts, MySpace intended to induce Plaintiffs to take action and/or refrain from taking action.

70. Plaintiffs relied on MySpace's nondisclosures, without knowledge of the undisclosed material facts, and Plaintiffs were injured as a result.

71. Plaintiffs seek actual, direct, consequential and exemplary damages against MySpace and News Corp. for MySpace's fraudulent conduct.

72. MySpace and News Corp. are jointly and severely liable for these damages.

## COUNT V – NEGLIGENT MISREPRESENTATION

73. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

74. MySpace made express and implied representations to Plaintiffs in the course of MySpace's business and/or during transactions in which MySpace had an interest. MySpace knew or should have known that Plaintiffs were members of the class of persons that would receive their false and material representations. These false and material representations included misstatements of material facts and were made in regard to the security and safety of MySpace for young underage MySpace users.

75. MySpace supplied this false information for the guidance of others and Plaintiffs in their business.

76. MySpace did not exercise reasonable care or competence in obtaining and/or communicating information regarding the safety and security of MySpace for young underage MySpace users.

77. Plaintiffs justifiably relied on MySpace's negligent misrepresentations and were thereby injured. MySpace's negligent misrepresentations were there proximate cause of Plaintiffs' injuries.

78. Plaintiffs seek actual and exemplary damages against MySpace and News Corp. for MySpace's negligent misrepresentations.

79. MySpace and News Corp. are jointly and severely liable for these damages.

**COUNT VI – SEXUAL ASSAULT**

80. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

81. Pete Solis acted intentionally, knowingly and/or recklessly when he sexually assaulted 14-year-old Julie.

82. As a direct and foreseeable result of Pete Solis' conduct, 14-year-old Julie was physically, emotionally and psychologically traumatized. These damages are permanent.

83. Plaintiffs seek actual and exemplary damages against Pete Solis for sexual assault.

**COUNT VII – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

84. Plaintiffs fully incorporate all the facts averred above herein. All conditions precedent have occurred or have been waived.

85. Plaintiffs are seeking relief on behalf of 14-year-old Julie for Pete Solis' intentional infliction of emotional distress.

86. Pete Solis acted intentionally and/or recklessly when he sexually assaulted 14-year-old Julie. Pete Solis' actions were intend to cause or were substantially certain to cause extreme emotional distress to 14-year-old Julie. Alternatively, Pete Solis' knew or should have known that his actions created a high degree of risk of harm to 14-year-old

Julie and he deliberately proceeded to act in conscious indifference and disregard to 14-year-old Julie.

87. Pete Solis' actions and conduct were extreme and outrageous. The sexual assault of 14-year-old Julie was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and is utterly intolerable in a civilized society.

88. 14-year-old Julie suffered extreme emotional distress due to the sexual assault inflicted on her by Pete Solis. This emotional distress continues to be extreme and severe. Pete Solis' actions proximately caused 14-year-old Julie's extreme and severe emotional distress.

89. No alternative cause of action would provide a remedy for 14-year-old Julie's extreme and severe emotional distress.

90. Plaintiffs seek actual and exemplary damages against Pete Solis for his intentional infliction of emotional distress on 14-year-old Julie.

## VI.

## JURY DEMAND

91. Pursuant to TEX. R. CIV. P. 216, Plaintiffs respectfully demand a trial by jury of all issues so triable. The appropriate fee has been tendered.

## VII.

## PRAYER FOR RELIEF

92. Accordingly, Jane Doe, individually, seeks recovery for all medical and psychological counseling expenses that have been incurred and may be incurred in the future, on behalf of Julie Doe, while Julie Doe is a minor.

93. Jane Doe, as next of friend of Julie Doe, her minor daughter, seeks compensatory and exemplary damages for Julie Doe's pecuniary loss, mental anguish, psychological trauma, pain and suffering, and emotional distress, in the past and the future, as well as future medical and psychological counseling expenses.

94. WHEREFORE, Plaintiffs request that this Court enter judgment against the Defendants as follows:

(a) Compensatory damages not too exceed Thirty (30) Million Dollars, the exact amount to be determined at trial;

(b) Exemplary Damages, the exact amount to be determined at trial;

(c) Reasonable and necessary attorneys' fees, expenses and costs of suit as provided by law;

(d) Pre- and post-judgment interest on all amounts awarded at the maximum interest rate provided by law; and

(e) Any further relief in law and in equity to which Plaintiffs may be justly entitled.

DATED: August 10, 2006

Respectfully submitted,

Adam J. Loewy
State Bar No. 24041353
Carl R. Barry
State Bar No. 24036192
BARRY & LOEWY LLP
One Congress Plaza
111 Congress Avenue, Suite 400
Austin, Texas 78701
(800) 892-5044

Kurt B. Arnold
State Bar No. 24036150
Jason A. Itkin
State Bar No. 24032461
ARNOLD & ITKIN LLP
700 Louisiana Street, Suite 4700
Houston, Texas 77002
(713) 222-3800

**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

This is to certify that on this the 10th day of August, 2006, a true and correct copy of the above and foregoing was properly forwarded to the following counsel of record in accordance with the Texas Rules of Civil Procedure as indicated below:

***VIA FACSIMILE AND/OR CERTIFIED U.S. MAIL***

Michael D. Marin
Susan Denmon Gusky
Christopher V. Popov
Vinson & Elkins L.L.P.
The Terrace 7
2801 Via Fortuna, Suite 100
Austin, Texas 78746

Pete I. Solis
*Pro Se*
160 Calderon
Buda, Texas 78610

Carl R. Barry

March 20, 2006

Attorney Christine Varney
Hogan & Hartson, LLP
Columbia Square
555 Thirteenth Street, NW
Washington, D.C. 20004

Dear Ms. Varney:

I have appreciated your responding to my concerns about MySpace.com ("MySpace"), providing the opportunity to meet with you and your colleagues, including MySpace.com's Chief Executive Officer Chris DeWolfe, as well as our continuing discussions.

The preliminary steps outlined in your letter are a welcome start, but I am deeply concerned that they would leave children at risk from pornography and sexual predators and other potential problems. While our discussions have been encouraging, I ask MySpace to take certain specific practical steps to address immediately the most critical concerns identified by my office. These measures are technologically feasible, as well as consistent with your stated terms of service and your own explicit goal of prohibiting nudity and other offensive or inappropriate material from your website:

- Provide filtering software on the website that parents can download to block access to MySpace, as well as other websites that include sexually explicit material and other inappropriate content.
- Ban anyone under 16 from MySpace. If 14 and 15 year olds have access to any site, it should be separate and distinct. This new possible website should also ban children under the age of 14.
- Initiate a member login with age verification to regulate visitors viewing other member profiles, including pictures and access to group materials. Any access to adult content should be vigorously restricted to individuals 18 or older.
- Implement technology to ensure that 14 and 15 year olds are prohibited from changing their profile settings from private to public, and no photos or profiles of minors can be viewed by anyone older than 16 without parental consent.
- Increase staffing and employ additional filtering technology to effectively block nudity and sexually explicit images and other violations of MySpace terms of service and preclude people looking for sex from communicating or contacting

EXHIBIT
A

children. MySpace should also do proactive manual searches of its site for material that violates its terms of service.

- Delete anyone who violates MySpace terms of service, and permanently ban a user from MySpace for continually posting prohibited deep links with pornography or other inappropriate material.
- Establish the new Security Director as an aggressive watchdog independent and separate from the corporate hierarchy reporting directly to the Board of Directors.
- Delete explicit reference to swingers as a browse term and groups or clubs identified as swingers or people seeking sex.
- Fully disclose in clear and conspicuous terms that MySpace contains explicit sexual content and users seeking sexual encounters, and prior use of the site by sexual predators to target minors.

Although new technology may be needed to fully protect children, much of it is already available. This site now exposes young people to a perilous cyber environment with people posting sexually explicit materials and looking for sexual relationships. In fact, children can still view pornographic images, links to X-rated websites, "clubs" involving adults seeking sexual encounters, and webcam sex for sale offers. I ask you to adopt my proposed steps immediately even as you develop new technology offering better protections.

I am prepared to continue our constructive discussions and ask that you contact my office. I welcome any other ideas you may have for advancing our shared goal of making MySpace a safe site for all. Again, thank you for taking the time to visit us and being responsive to our concerns. I look forward to making further progress in the coming days.

Sincerely,

RICHARD BLUMENTHAL

RB/pas

JIM PETRO
ATTORNEY GENERAL
STATE OF OHIO

30 E. Broad St., 17th Fl.
Columbus, OH 43215-3428
Telephone: (614) 466-4320
Facsimile: (614) 466-5087
www.ag.state.oh.us

March 24, 2006

Chris DeWolfe, CEO
MySpace.com
1333 2nd Street
Santa Monica, CA 90401

Dear Mr. DeWolfe:

I am increasingly concerned by reports that young children using MySpace.com have been victims of harassment, sexual solicitation, and even sexual assault. One such incident is currently under investigation by the Broadview (Ohio) Police Department involving the alleged rape of a 14-year-old Ohio student by an adult male she met on your Web site. Although social networking sites can be a fun way to interact with friends and family, I am concerned that your current operating policies may place children at risk.

Over the last several months, my office and local law enforcement have received complaints from parents regarding the type of information minors can access on your site. A simple search of your site demonstrates that children can easily access a myriad of inappropriate material such as pornographic images, ads for sexual products, obscene language, and various references to the use of illegal substances. This material is in direct conflict with paragraph five of your "Terms of Use Agreement" which states, "a profile may not include the following items: ...photographs containing nudity, or obscene, lewd, excessively violent, harassing, sexually explicit or otherwise objectionable subject matter".

To address these concerns, I ask that you consider the following actions to safeguard children against potential abuse and exploitation. My office believes these enhancements would be in the best interest of all affected parties.

EXHIBIT B

1. Increase the minimum user age from 14 to 16 and prohibit adult users from accessing the profiles of minors.
2. Explicitly state in the Terms of Use Agreement and during login that the site contains sexually explicit material and that users have no expectation of privacy in regards to information posted on MySpace.com
3. Require that all new users enter a verifiable credit card number during the registration process. Upon successful completion of the verification process, a brochure describing the site and a hard copy of the Terms of Use Agreement should be sent to the card holder.
4. Place a "report misconduct" button on every MySpace page.
5. Increase the company's ability to identify, remove, and respond to violations of MySpace policies by expanding the use of filtering technology.
6. Implement a "zero tolerance" policy regarding the violation of MySpace Terms of Use Agreement. Members violating the policy should be permanently barred from the site and their profiles should be purged from the system.
7. Establish an independent board or commission to assist the company in proactively dealing with privacy and security concerns.
8. Prohibit minors from accessing groups, clubs, or profiles that contain adult content.

Although the convenience of the Internet may be a gateway to limitless information, it can also be fraught with pitfalls that may be dangerous to the unsuspecting user. Under its current conceptualization, MySpace increases youth exposure to inappropriate material, placing them at a higher risk of victimization. It is my hope that you will immediately move to implement the recommendations listed above.

If you have any questions or concerns, please do not hesitate to contact me.

Very Truly Yours,

Jim Petro
Ohio Attorney General

MEDIA CENTER

Home Page > Media Center > Full Article

# AG REILLY DEMANDS CHANGES TO MYSPACE.COM WEBSITE TO PROTECT TEENS FROM ONLINE PREDATORS

## Calls on website to take immediate steps to be

**May 2, 2006**

**CONTACT: MEREDITH BAUMANN**
**(617) 727-2543**

**BOSTON** -- Attorney General Tom Reilly is demanding that MySpace.com, the popular social networking site, make dramatic changes to its web site to ensure the safety of minors who use MySpace.

In a letter to company officials, AG Reilly demanded that MySpace increase its minimum user age from 14 to 18 after an investigation he launched in March 2006 revealed that MySpace does not have sufficient safeguards in place to protect children from sexually explicit and other inappropriate content.

AG Reilly's investigation also raised concerns that potential child predators use MySpace to locate and communicate with possible victims and that MySpace is also used to post violent images or content to bully or threaten children.

"MySpace allows 14 and 15 year-olds to register as members of its 'community' and claims to be able to protect their safety," AG Reilly said. "Our investigation revealed that these measures are not effective and do not protect children from being exposed to inappropriate content they just shouldn't see."

AG Reilly called on MySpace to improve the safety and security of its site by:

- Instituting an age and identity verification system;
- Equipping every MySpace page with a "Report Inappropriate Content" link;

EXHIBIT
C

- Responding to all reports of inappropriate content within 24 hours;
- Increasing significantly the number of employees who review images and content on the MySpace website;
- Implementing filtering technology that effectively blocks sexually explicit or violent images;
- Immediately deleting any profiles that violate MySpace's Terms of Use Agreement and permanently banning those members from using the site;
- Immediately removing all advertisements and other MySpace sponsored content that are inappropriate for children; and
- Offering free, downloadable software that allows parents to block use of MySpace.

AG Reilly's staff met with MySpace in March 2006 to discuss their concerns with how the website operated. Although MySpace maintains that only members under the age of 18 can view the profiles of members ages 14-15 years old, AG Reilly's investigation found that MySpace does not have any system in place to verify its members' ages. As a result, an adult can register as a minor member and use that profile to seek access to the profiles of countless underage members.

AG Reilly's investigators were able to register as minors 14 and 15 years old. The investigators were then able to gain access to numerous profiles of children between the ages of 14 and 17 years old.

The investigators also discovered that any user, regardless of age, can browse the MySpace website and find forums where children are posting messages. In these various forums, adults can not only view the child's picture, age, and hometown, but they can also communicate with the child.

AG Reilly criticized MySpace's own content on its website for contributing to the exposure of children to inappropriate content and communications. For example, the investigation revealed that MySpace regularly advertises 18+ "Intimate Dating" sites in its "High School" forums. During the investigation, MySpace's own search parameters allowed 14 and 15 year olds to search the site for "swingers" or designate themselves as "smokers" or "drinkers" in their user profiles.

AG Reilly's Office has become a known and respected resource on the ever-evolving world of the Internet, particularly as it relates to child safety. Since taking office, AG Reilly has devoted unprecedented resources to protecting Internet users and has dedicated staff specifically to education and training efforts.

As part of an effort to enhance parental awareness of online safety for children, AG Reilly's Office is leading a series of workshops throughout Massachusetts to educate parents about the dangers that children face when using the Internet. Today AG

Reilly will conduct an Internet Safety program for parents in Weymouth warning them of the potential dangers that exist when their children use the Internet. In an April sting operation, AG Reilly charged six people for allegedly using the Internet to possess or disseminate child pornography.

AG Reilly has also worked to make the Internet safe for consumers, recently publishing a revised Consumer Guide to the Internet that provides parents with tips on how to make their children's online activities safer. Safety tips also describe how to avoid identity theft and so-called "phishing" schemes.

**Return to article list**

© 1999 - 2006 · Massachusetts Attorney General's Office. All Rights Reserved.
Powered by bx.com software

ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 22, 2006

Mr. Christopher DeWolfe
Chief Executive Officer
MySpace, Inc
1333 Second St.
Santa Monica, California 90401

Mr. Mark Zukerberg
Chief Executive Officer
TheFacebook, Inc.
471 Emerson St.
Palo Alto, California 94301-1605

Mr. John Hiler
Chief Executive Officer
Xanga.com
555 8th Ave. FL. 21
New York, New York 10018

Mr. Jonathan Abrams
Chief Executive Officer
Friendster, Inc.
1380 Villa St.
Mountain View, California 94041

Dear Sirs:

As Attorney General of Texas, I have become increasingly concerned about the reports of sexual predators using social networking websites such as MySpace.com, Xanga, Friendster and Facebook to lure young children into dangerous, potentially life threatening situations. To that end, today I am writing to urge you to take measures to protect the millions of children who use your services daily. By taking a few proactive steps, you can make your websites safer for all users, especially children.

**Identity Verification**

By not requiring bank account information or a credit card in order to access your services, you have no way of authenticating the identity or age of your users, thereby providing a blanket of anonymity to those who wish to engage in criminal activity on your website. I request that you take steps to verify the identity of those individuals using your sites to post harmful or illegal images and to engage in two way communications. Although I understand that you currently use an age verification system, our investigators have found it uncomfortably easy in a relatively short period of time to locate many underage profiles on your sites. A system of identity/age verification via credit card or a verified e-mail account would be a better system than the current methods used by your websites.

**Child Pornography Identification**

I understand that software exists which scans photographic images before they are posted on user accounts or anywhere else on your sites. The software assigns a hash value (based on algorithms) to each photograph and then attempts to match it against a database, maintained by your sites, that contains the hash values of many known images of child pornography. This software is already being utilized by AOL to prevent images of child pornography from being

EXHIBIT
D

transmitted via e-mail. You should install the same database that automatically scans all uploaded images prior to allowing them to be posted on your systems. When an image's hash value matches that of a known image of child pornography, the posting of that image could be blocked and the incident reported to the proper authorities.

**Oversight of Websites**

Finally, I urge you to consider increasing the number of staff dedicated to reviewing images and profiles which violate the terms of use policies of your websites. With hundreds of thousands of new users registering daily, it is impossible to keep up with this responsibility with current resources.

I know many state officials are calling on you to stand up for the safety and security of our children. I add my voice to theirs and hope you will choose to do what is right for our children. While the young girls of my generation wrote in diaries that protected their life stories under lock and key, the young children of today post the most intimate details of their lives in a public forum, one where sexual predators lurk around every corner. I look forward to hearing from you in the near future about the actions you will be taking on this very important matter.

Sincerely,

Greg Abbott
Attorney General of Texas